

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

H.B. NO. 2544, RELATING TO WORKERS' COMPENSATION.

BEFORE THE:

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

DATE: Tuesday, February 6, 2018

TIME: 10:30 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Claire W.S. Chinn, Deputy Attorney General

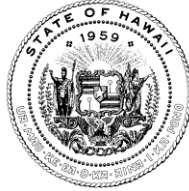
Chair Johanson and Members of the Committee:

The Department of the Attorney General has a legal concern about this bill.

This bill amends chapter 386, Hawaii Revised Statutes (HRS), by adding a new section to part III entitled "Cancer Presumption." This section grants the presumption that cancer developed by claimants for worker's compensation who performed services as firefighters or volunteer firefighters was developed as a result of their work, provided evidence of exposure to a known carcinogen.

The provision in subsection (b) of the new section provides "[t]he claimant, or next of kin, shall receive compensation including full medical care, disability indemnity, and death benefits." The existing law states that medical care and disability payments are provided to the injured employee or worker. Further, disability payments after death are payable to an "employee's dependents" pursuant to Section 386-34, HRS. Similarly, death benefits are payable to "dependents" of the deceased employee pursuant to Section 386-41, HRS. In both instances, "dependents" are defined in the statute. In light of this, the term "next of kin" is overly broad and inconsistent with the wording in the existing law. In order to be consistent, "dependents" should be substituted for "next of kin."

Thank you for the opportunity to testify on this matter.



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 6, 2018

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Daniel Holt, Vice Chair, and
Members of the House Committee on Labor and Public Employment

Date: Tuesday, February 6, 2018
Time: 10:30 a.m.
Place: Conference Room 309, State Capitol

From: Leonard Hoshijo, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 2544 RELATING TO WORKERS' COMPENSATION

I. OVERVIEW OF PROPOSED LEGISLATION

This bill proposes another layer of presumption specific to cancer developed by firefighters and volunteer firefighters during employment. The bill adds a new section to Chapter 386, Hawaii Revised Statutes titled "Cancer Presumption".

The Department opposes this measure.

II. CURRENT LAW

Section 386-3, HRS, defines injury and provides that the employee's employer shall pay compensation to the employee or the employee's dependents as provided in chapter 386 if an employee suffers personal injury either by accident arising out of and in the course of employment, or by disease proximately caused by or resulting from the nature of the employment.

Section 386-21, HRS, establishes the employer to provide to the employee so long as reasonably needed, all medical care, services and supplies as the nature of the injury requires.

Section 386-31, HRS, defines permanent and temporary total disability benefits to be paid to the injured employee at sixty-six and two-thirds per cent of the

employee's average weekly wages.

Section 386-41 (a-c), HRS, establishes death benefits including funeral and burial allowances, benefits to dependents, and determines the maximum weekly benefits payable to dependents of the deceased employee not to exceed sixty-six and two-thirds per cent of the employee's average weekly wages.

Section 386-73.5, HRS, establishes that the DLIR Director has original jurisdiction over all controversies and disputes arising out of workers' compensation.

Section 386-85, HRS, provides a presumption of employment and compensation for a work-covered work injury, in the absence of substantial evidence to the contrary.

III. COMMENTS ON THE HOUSE BILL

The department appreciates the intent of this proposal to ensure that firefighters receive proper medical treatment in a timely manner, as well as lessen the impact due to the effects of cancer. The department has general concerns where a class of workers is treated differently. Of greater concern, it is unclear what is meant by adding another layer of presumption. If the language is inserted in chapter 386, it will be confusing to have two presumptions. DLIR is concerned that this confusion will result in legal ambiguities and more disputes in a system already burdened by litigiousness.



HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1463, AFL-CIO
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LATE

**HOUSE OF REPRESENTATIVES
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2018**

February 6, 2018

LATE

Committee on Labor and Public Employment

**Testimony by
Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO**

H. B. No. 2544 RELATING TO WORKERS' COMPENSATION

The Hawaii Fire Fighters Association (HFFA), Local 1463, IAFF, AFL-CIO represents more than 1,900 professional active-duty and 800 retired fire fighters throughout the State. On behalf of our members, HFFA **supports H. B. No. 2544** which grants the presumption that cancer developed by claimants for worker's compensation who performed services as firefighters was developed as a result of their work, provided evidence of exposure to a known carcinogen.

Thirty-three states and nine Canadian provinces already have cancer presumptive laws that provide fire fighters with medical and service-connected disability benefits. Several studies, as recommended by the International Association of Fire Fighters (IAFF), serve as the basis that demonstrates the need for cancer presumptive legislation locally. These studies are consistent with other previous studies assessing the cancer risks in fire fighters associated with occupational exposure. As a stakeholder participating in the Cancer Presumption Task Force that convened in 2016 as a response to H.C.R. No. 32, H.D. 1, S.D. 1, HFFA is grateful that H. B. No. 2544 addresses the concerns of the fire service.

HFFA appreciates the Committee's favorable consideration of this measure and ask that you **pass H. B. No. 2544**. Thank you for the opportunity to testify.

TESTIMONY OF ALISON UEOKA

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair

Tuesday, February 6, 2018
10:30 a.m.

HB 2544

Chair Johanson, Vice Chair Holt, and members of the Committee on Labor & Public Employment, my name is Alison Ueoka, President of the Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill. The workersqcompensation laws in the State of Hawaii currently apply to all employees who fall under the law including those who are insured by purchasing insurance and those who are insured by a self-insured.

This bill carves out a specific class of worker, changes the process for determining compensability and changes the way an employer may exercise their due process rights. We believe this bill creates an unlevel application of workersqcompensation benefits in Hawaii. We ask that you hold this bill.

Thank you for the opportunity to testify.

HB-2544

Submitted on: 2/5/2018 9:28:56 AM

Testimony for LAB on 2/6/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities	Support	No

Comments: